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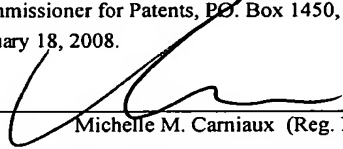
**UNITED STATES PATENT AND TRADEMARK OFFICE**  
**BOARD OF PATENT APPEALS AND INTERFERENCES**

Appellant : Thilo LEINEWEBER et al.  
Serial No. : 10/797,680  
Filing Date : March 9, 2004  
For : METHOD AND DEVICE FOR CONTROLLING THE  
SPEED OF A MOTOR VEHICLE  
Group Art Unit : 3664  
Examiner : Marie Weiskopf  
Confirmation No. : 4908

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Michelle M. Carniaux (Reg. No. 36, 098)

**APPEAL BRIEF TRANSMITTAL**

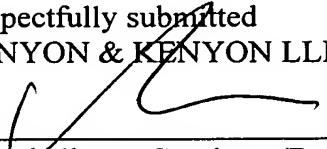
SIR:

Accompanying this Appeal Brief Transmittal is an Appeal Brief pursuant to 37 C.F.R. § 41.37 for filing in the above-identified patent application. The Notice of Appeal was mailed on November 16, 2007 and received by the PTO on November 23, 2007, so that the two-month Appeal Brief due date is January 23, 2008.

Please charge the appropriate Appeal Brief fee of \$510.00 under 37 C.F.R. § 1.17(c) to Deposit Account of **Kenyon & Kenyon LLP**, No. **11-0600**. The Commissioner is also authorized, as necessary and/or appropriate, to charge any additional and appropriate fees, including any Rule 136(a) extension fees, or credit any overpayment to Deposit Account No. **11-0600**. A duplicate of this Transmittal is enclosed.

Respectfully submitted  
**KENYON & KENYON LLP**

Dated: 18 January

By:   
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**PATENT**  
Docket No. 10191/3467

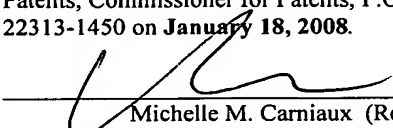
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Michelle M. Carniaux (Reg. No. 36, 098)

**APPEAL BRIEF PURSUANT TO 37 C.F.R. § 41.37**

Sir:

On November 16, 2007, Appellants submitted a Notice of Appeal from the final rejection of claims 1, 2, and 5 contained in the Final Office Action issued by the U.S. Patent and Trademark Office (the "PTO") on July 26, 2007 in the above-identified patent application. In accordance with 37 C.F.R. § 41.37, this brief is submitted in support of the appeal of the final rejection of claims 1, 2, and 5. For at least the reasons set forth below, the final rejection of claims 1, 2, and 5 should be reversed.

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**1. REAL PARTY IN INTEREST**

The real party in interest in the present appeal is:

Robert Bosch GmbH  
Postfach 30 02 20  
D-70442 Stuttgart  
Federal Republic of Germany

Robert Bosch GmbH is the assignee of the entire right, title, and interest in the present application.

**2. RELATED APPEALS AND INTERFERENCES**

There are no interferences or other appeals related to the present application.

**3. STATUS OF CLAIMS**

Claims 1, 2, and 5 are currently pending and stand finally rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,273,204 to Winner et al. (hereinafter Winner et al.).

Claims 3 and 4 have been canceled.

Appellants appeal the rejection of claims 1, 2, and 5. A copy of all of the claims involved in the appeal is attached hereto in the Appendix.

**4. STATUS OF AMENDMENTS**

There are currently no amendments pending.

**5. SUMMARY OF THE CLAIMED SUBJECT MATTER**

Generally, the pending claims are directed to devices and methods for controlling the speed of a motor vehicle in terms of either a constant distance control, or a constant speed control. (See, e.g., page 1, lines 2 to 9 of Appellants' specification). Independent claim 1 recites a device for controlling the speed of a motor vehicle, including an arrangement for allowing a distance to a preceding vehicle to be set by a driver of the vehicle in the form of a time gap (see, e.g., page 3, lines 21 to 23 and Figure 1 of Appellants' specification); an arrangement for changing longitudinal dynamics of the speed control when the time gap

changes (see, e.g., page 4, lines 2 to 7 and Figure 1 of Appellants' specification); an arrangement for increasing, given a decrease in the time gap, at least one of a maximum possible vehicle acceleration and a maximum possible vehicle deceleration implementable by a speed control system so that the vehicle is capable of at least one of accelerating and decelerating more quickly given the decrease in the time gap (see, e.g., page 4, lines 7 to 11 and Figure 1 of Appellants' specification); and an arrangement for first activating, given the decrease in the time gap, deceleration devices of the vehicle at a shorter distance from the preceding vehicle (see, e.g., page 4, lines 11 to 15 and Figure 1 of Appellants' specification).

Independent claim 5 recites a method for controlling the speed of a motor vehicle, including setting a distance to a preceding vehicle by a driver of the vehicle in the form of a time gap (see, e.g., page 3, lines 21 to 23 and Figure 1 of Appellants' specification); changing longitudinal dynamics of the speed control when the time gap changes (see, e.g., page 4, lines 2 to 7 and Figure 1 of Appellants' specification); increasing, given a decrease in the time gap, at least one of a maximum possible vehicle acceleration and a maximum possible vehicle deceleration implementable by a speed control system so that the vehicle is capable of at least one of accelerating and decelerating more quickly given the decrease in the time gap (see, e.g., page 4, lines 7 to 11 and Figure 1 of Appellants' specification); and first activating, given the decrease in the time gap, deceleration devices of the vehicle at a shorter distance from the preceding vehicle (see, e.g., page 4, lines 11 to 15 and Figure 1 of Appellants' specification).

## **6. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL**

Claims 1, 2, and 5 are currently pending and stand finally rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,273,204 to Winner et al. (hereinafter Winner et al.).

## **7. ARGUMENTS**

Claims 1, 2, and 5 stand rejected under 35 U.S.C. § 102(b) as anticipated by Winner et al. It is respectfully submitted that Winner et al. do not anticipate any of the present claims as explained below.

To anticipate a claim, each and every element as set forth in the claim must be found

in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of Calif.*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987). Furthermore, “[t]he identical invention must be shown in as complete detail as is contained in the . . . claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989). That is, the prior art must describe the elements arranged as required by the claims. *In re Bond*, 910 F.2d 831, 15 U.S.P.Q.2d 1566 (Fed. Cir. 1990). To the extent the Examiner may be relying on the doctrine of inherent disclosure in support of the anticipation rejection, the Examiner must provide a “basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic *necessarily* flows from the teachings of the applied art.” (See M.P.E.P. § 2112; emphasis in original; see also *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990)). Thus, the M.P.E.P. and the case law make clear that simply because a certain result or characteristic may occur in the prior art does not establish the inherency of that result or characteristic.

**A. Claims 1 and 2 are not anticipated by Winner et al.**

Claim 1 of the present application recites:

A device for controlling a speed of a motor vehicle in terms of one of (a) a constant distance control in the case that at least one preceding vehicle is detected by a radar sensor and (b) a constant speed control in the case that no preceding vehicle is detected by a radar sensor, the device comprising:

- an arrangement for allowing a distance to a preceding vehicle to be set by a driver of the vehicle in the form of a time gap;
- an arrangement for changing longitudinal dynamics of the speed control when the time gap changes;
- an arrangement for increasing, given a decrease in the time gap, at least one of a maximum possible vehicle acceleration and a maximum possible vehicle deceleration implementable by a speed control system so that the vehicle is capable of at least one of accelerating and decelerating more quickly given the decrease in the time gap; and
- an arrangement for first activating, given the decrease in the time gap, deceleration devices of the vehicle at a shorter distance from the preceding vehicle.

Winner et al. provide a method and arrangement for speed control of a vehicle in which the driver can select the dynamic performance of the system. However, Winner et al. do not identically disclose, or suggest, the feature of an arrangement for increasing, given a decrease in the time gap, at least one of a maximum possible vehicle acceleration and a maximum possible vehicle deceleration implementable by a speed control system so that the

vehicle is capable of at least one of accelerating and decelerating more quickly given the decrease in the time gap, as provided for in the context of claim 1.

In the Final Office Action, the Examiner alleged that this feature of the present application is described at column 4, lines 46 to 59 of Winner et al. (Final Office Action, p. 2). However, the quoted section of Winner et al. merely indicates changing maximum acceleration and deceleration limit values “in dependence upon the dynamic performance desired by the driver.” (Winner et al., col. 4, lines 51 to 53). Further, Winner et al. explains that the dynamic performance is chosen by at least one switch, such that “[w]hen this switch is actuated, the limit values are changed and, when the switch is released, the old limit values are restored.” (Winner et al., col. 4, line 67 to col. 5, line 3). Nowhere do Winner et al. indicate that given a decrease in the time gap, the maximum possible vehicle acceleration and deceleration are increased. Indeed, Winner et al. indicate that the desired spacing is “pregiven by the driver,” “which fixes the desired time distance to the forward vehicle.” (Winner et al., col. 4, lines 15 and 22 (emphasis added)). Thus, the driver of Winner et al. fixes the desired time distance, and separately chooses the limit values of acceleration and deceleration. As a result, the setting of the maximum possible vehicle acceleration and deceleration in Winner et al. is completely independent from the setting of the time gap. Therefore, Winner et al. do not identically disclose, or suggest, the feature of an arrangement for increasing, given a decrease in the time gap, at least one of a maximum possible vehicle acceleration and a maximum possible vehicle deceleration implementable by a speed control system so that the vehicle is capable of at least one of accelerating and decelerating more quickly given the decrease in the time gap, as provided for in the context of claim 1.

In addition, Winner et al. do not identically disclose, or suggest, the feature of an arrangement for first activating, given the decrease in the time gap, deceleration devices of the vehicle at a shorter distance from the preceding vehicle, as provided for in the context of claim 1.

In the Final Office Action, the Examiner alleged that this feature of the present application is described at column 4, lines 15 to 45 of Winner et al. (Final Office Action, p. 3). However, the quoted section of Winner et al. merely refers to a driver setting a desired spacing, and a controller controlling engine power and brake power to maintain constant speed or constant spacing. Further, the remainder of the specification of Winner et al. does not suggest this feature of the present application. Although Winner et al. indicate changing

the limit values for maximum possible vehicle acceleration or deceleration, nowhere does Winner et al. indicate, given the decrease in the time gap, first activating deceleration devices at a shorter distance from the preceding vehicle. As more fully set forth above, the desired spacing of Winner et al. is “pregiven” and “fixe[d].” (Winner et al., col. 4, lines 15 and 22 (emphasis added)). Thus, the time of activation of deceleration devices in Winner et al. is not dependent upon a decrease in the time gap. Indeed, Winner et al. does not even mention varying the time of activation of deceleration devices, but only mentions changing the limit values of the maximum possible vehicle acceleration and deceleration. Thus, this change of the limit values affects only the upper limits of acceleration or deceleration, but does not affect the time of activation of acceleration or deceleration. Therefore, Winner et al. do not identically disclose, or suggest, the feature of an arrangement for first activating, given the decrease in the time gap, deceleration devices of the vehicle at a shorter distance from the preceding vehicle, as provided for in the context of claim 1.

Accordingly, Winner et al. do not identically disclose, or suggest, the features of claim 1, so that Winner et al. do not anticipate claim 1.

Claim 2 depends from independent claim 1, and thus is allowable for at least the same reasons that claim 1 is allowable.

**B. Claim 5 is not anticipated by Winner et al.**

Claim 5 of the present application recites:

A method for controlling a speed of a motor vehicle in terms of one of (a) a constant distance control in the case that at least one preceding vehicle is detected by a radar sensor and (b) a constant speed control in the case that no preceding vehicle is detected by a radar sensor, the method comprising:

setting a distance to a preceding vehicle by a driver of the vehicle in the form of a time gap;

changing longitudinal dynamics of the speed control when the time gap changes;

increasing, given a decrease in the time gap, at least one of a maximum possible vehicle acceleration and a maximum possible vehicle deceleration implementable by a speed control system so that the vehicle is capable of at least one of accelerating and decelerating more quickly given the decrease in the time gap; and

first activating, given the decrease in the time gap, deceleration devices of the vehicle at a shorter distance from the preceding vehicle.

As discussed above, Winner et al. do not identically disclose, or suggest, the features

of increasing, given a decrease in the time gap, at least one of a maximum possible vehicle acceleration and a maximum possible vehicle deceleration implementable by a speed control system so that the vehicle is capable of at least one of accelerating and decelerating more quickly given the decrease in the time gap, and first activating, given the decrease in the time gap, deceleration devices of the vehicle at a shorter distance from the preceding vehicle, as provided for in the context of claim 5.

In the Final Office Action, the Examiner again alleged that these features of the present application are described at column 4, lines 46 to 59, and column 4, lines 15 to 45, respectively, of Winner et al. (Final Office Action, p. 3). As more fully set forth above, Winner et al. does not identically disclose, or suggest, these features of the present application.

Accordingly, Winner et al. do not identically disclose, or suggest, the features of claim 5, so that Winner et al. do not anticipate claim 5.

**8. CLAIMS APPENDIX**

An appendix containing the claims involved in the appeal is attached hereto.

**9. EVIDENCE APPENDIX**

No evidence has been submitted pursuant to 37 C.F.R. §§ 1.130, 1.131 or 1.132. No other evidence has been entered by the Examiner or relied upon by Appellants in the appeal. An "Evidence Appendix" is nevertheless attached hereto.

**10. RELATED PROCEEDINGS APPENDIX**

There are no other prior or pending appeals, interferences or judicial proceedings known by the undersigned, or believed by the undersigned to be known to Appellants or the assignee, Robert Bosch GmbH, "which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal." As such, there no "decisions rendered by a court or the Board in any proceeding identified pursuant to [37 C.F.R. § 41.37(c)(1)(ii)]" to be submitted. A "Related Proceedings Appendix" is nevertheless attached hereto.

**11. CONCLUSION**

For at least the reasons indicated above, Appellants respectfully submit that the art of record does not teach or suggest Appellants' invention as recited in the claims of the above-identified application. Accordingly, it is respectfully submitted that the invention recited in the claims of the present application is new, non-obvious and useful. Reversal of the Examiner's rejections of the claims is therefore respectfully requested.

Respectfully submitted,

Dated:

18 Jan 2005

By:



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One Broadway  
New York, NY 10004  
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**CLAIMS APPENDIX**

1. A device for controlling a speed of a motor vehicle in terms of one of (a) a constant distance control in the case that at least one preceding vehicle is detected by a radar sensor and (b) a constant speed control in the case that no preceding vehicle is detected by a radar sensor, the device comprising:

an arrangement for allowing a distance to a preceding vehicle to be set by a driver of the vehicle in the form of a time gap;

an arrangement for changing longitudinal dynamics of the speed control when the time gap changes;

an arrangement for increasing, given a decrease in the time gap, at least one of a maximum possible vehicle acceleration and a maximum possible vehicle deceleration implementable by a speed control system so that the vehicle is capable of at least one of accelerating and decelerating more quickly given the decrease in the time gap; and

an arrangement for first activating, given the decrease in the time gap, deceleration devices of the vehicle at a shorter distance from the preceding vehicle.

2. The device according to claim 1, wherein a change in the time gap allows different driving programs to be selected.

5. A method for controlling a speed of a motor vehicle in terms of one of (a) a constant distance control in the case that at least one preceding vehicle is detected by a radar sensor and (b) a constant speed control in the case that no preceding vehicle is detected by a radar sensor, the method comprising:

setting a distance to a preceding vehicle by a driver of the vehicle in the form of a time gap;

changing longitudinal dynamics of the speed control when the time gap changes;

increasing, given a decrease in the time gap, at least one of a maximum possible vehicle acceleration and a maximum possible vehicle deceleration implementable by a speed control system so that the vehicle is capable of at least one of accelerating and decelerating more quickly given the decrease in the time gap; and

first activating, given the decrease in the time gap, deceleration devices of the vehicle at a shorter distance from the preceding vehicle.

**EVIDENCE APPENDIX**

No evidence has been submitted pursuant to 37 C.F.R. §§1.130, 1.131, or 1.132. No other evidence has been entered by the Examiner or relied upon by Appellants in the appeal.

**RELATED PROCEEDINGS APPENDIX**

As indicated above in this Appeal Brief, there are no other prior or pending appeals, interferences or judicial proceedings known by the undersigned, or believed by the undersigned to be known to Appellants or the assignee, Robert Bosch GmbH, “which may be related to, directly affect or be directly affected by or have a bearing on the Board’s decision in the pending appeal.” As such, there no “decisions rendered by a court or the Board in any proceeding identified pursuant to [37 C.F.R. § 41.37(c)(1)(ii)]” to be submitted.